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MINTZ, LEVIN, COHN, FERRIS, GLOVSKY AND POPEO, P.C. ONE FINANCIAL CENTER BOSTON, MA 02111			CHANG, JUNGWON	
			ART UNIT	PAPER NUMBER
			2154	

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Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/825,164

Applicant(s)

DUIMOVICH ET AL.

Examiner

Jungwon Chang

Art Unit

2154

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 21 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-14, 16, 18-24 and 26-52 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14, 16, 18-24 and 26-52 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This Office Action is in response to RCE filed 10/21/2005.

Claims 15, 17 and 25 have been cancelled. Claims 1-14, 16, 18-24 and 26-52 are presented for examination.

2. Acknowledgment is made of applicant's claim for foreign priority under 35 U.S.C. 119(a)-(d). However, the certified copy has not been received.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

4. **Claims 1, 2, 5-8, 10 and 12** are rejected under 35 U.S.C. 102(e) as being anticipated by Haitzuka et al. (US 6,505,201), hereinafter Haitzuka.

5. As for claim 1, Haitzuka discloses the invention as claimed, including a method of managing a data access system configured to transfer data over a communication network (120, fig. 1) between a server system (130, 150, fig. 1) and a plurality of user

sites (102, fig. 1; clients; col. 1, lines 64-65) in response to requests from network browsers at the user sites (col. 1, lines 39-67; col. 2, lines 20-52), said method comprising the steps of:

monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring being controlled by a monitoring agent (client monitoring application, 110, fig. 3) resident at the first user site (100, fig. 3) (col. 5, lines 53-67; col. 6, lines 12-27; col. 6, line 56 – col. 7, line 4; col. 8, lines 16-30);

transmitting data indicative of the monitored performance data from the monitoring agent (monitoring data, fig. 3; 540, fig. 5; col. 5, lines 53-67; col. 6, line 56 – col. 7, line 4; col. 8, lines 16-30);

receiving the data indicative of the performance data transmitted from said performance monitor agents (col. 5, lines 53-67; col. 6, line 56 – col. 7, line 4; col. 8, lines 16-30);

selecting a quantity of data received (col. 6, lines 1-27; col. 6, lines 44-64);

summarizing the quantity of data received (data is summarized and classified; col. 6, lines 1-27; col. 6, lines 44-64); and

storing said summarized quantity of data into a database (140, fig. 3; col. 5, lines 47-52).

6. As for claim 2, Haitsuka discloses the method of claim 1 wherein the quantity of data selected represents performance of the data access system for a specific time interval (information on a periodic basis; col. 6, lines 1-12).

7. As for claim 5, Haitsuka discloses the method of claim 1 further comprising, before the receiving step, the steps of

receiving data indicative of the performance of a plurality of data access systems from said performance monitoring agents (col. 3, lines 3-30); and

filtering said data received to pertain to a selected data access system (col. 7, line 55 – col. 8, line 11; col. 8, lines 16-30).

8. As for claim 6, Haitsuka discloses the method of claim 1 wherein the performance data is correlated to factors of interest (col. 7, line 55 – col. 8, line 11; col. 8, lines 16-30).

9. As for claim 7, Haitsuka discloses the method of claim 1 wherein the server system comprises at least one Hyper Text Transfer Protocol (HTTP) server (web server; fig. 1).

10. As for claim 8, Haitsuka discloses the method of claim 7 wherein the performance data comprises a summary of performance metrics for a HTTP page (data is summarized and classified; col. 6, lines 1-27; col. 6, lines 44-64; col. 3, lines 3-11).

11. As for claim 10, Haitzuka discloses the method of claim 1 further including the step of calculating further summarized data using said stored summarized data (data is summarized and classified; col. 6, lines 1-27; col. 6, lines 44-64; col. 3, lines 3-11).

12. As for claim 12, Haitzuka discloses a performance management system that monitors data transferred between at least one remote site and at least one user site (col. 1, lines 39-67; col. 2, lines 20-52), comprising:

a network browser (160, fig. 3) disposed on a first user site (100, fig. 3) of the at least one user site and configured to browse the at least one remote site (col. 2, lines 20-32; col. 4, lines 53-65), in response to a request by a user of the first site, for transferring data between the at least one remote site and the first user site (col. 1, lines 39-67; col. 2, lines 20-52; col. 4, lines 53-65);

a client that resides on the at least one user site (client computer, fig. 3; col. 4, lines 16-38) and collects performance data associated with the data received from the at least one remote site (130, 150, fig. 1) (monitoring application 110 obtains identifying information; col. 8, lines 16-30; col. 9, lines 14-52; browser application stores the resource locator string; col. 10, claim 1); and

an agent in communication with the client and residing on the at least one user site (client monitoring application, fig. 3), the agent being adapted to create preliminary summary data of the performance data (data is summarized and classified; col. 6, lines 1-27; col. 6, lines 44-64).

***Claim Rejections - 35 USC § 103***

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. **Claims 3, 4, 9 and 11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Haitsuka et al. (US 6,505,201), hereinafter Haitsuka, in view of Liu et al. (US 6,839,680), hereinafter Liu.

15. As for claim 3, Haitsuka does not specifically disclose that the time interval is 15 minutes. However, Liu discloses the time scale may be varied by the user in order to view the system performance over specific time intervals (col. 12, line 45 – col. 13, line 15; various length fields defines the time interval; col. 28, lines 30-39). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Haitsuka and Liu because Liu's various time interval would allow setting the time interval to 15 minutes in order to observe system performance on a relatively fast time scale.

16. As for claim 4, Haitsuka does not specifically disclose wherein the performance data includes a timestamp means identifying a time when the performance data was observed and wherein the step of selecting comprises collecting data that was observed during the same time interval. However, Liu discloses wherein the performance data

includes a timestamp means identifying a time when the performance data was observed and wherein the step of selecting comprises collecting data that was observed during the same time interval (904, 906, fig. 9; col. 8, lines 62-65; col. 12, line 18 – col. 13, line 15). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Haitzuka and Liu because Liu's timestamp would track the user's activity by analyzing the duration time the user spends on browsing a particular URL (Liu, col. 12, lines 54-65).

17. As for claim 9, Haitzuka does not specifically disclose ascertaining quality of service conditions of said data access system. However, Liu discloses ascertaining quality of service conditions of said data access system (col. 19, lines 12-21; col. 23, lines 54-62; col. 57, lines 14-27). It would have been obvious to one of ordinary skill in the art at the time of the invention to combine the teachings of Haitzuka and Liu because Liu's ascertaining quality of service conditions of the system would provide more accurate and comprehensive assessment of the interests of the web visitor (Liu, col. 23, lines 54-62).

18. As for claim 11, Haitzuka discloses a performance management system for managing a data access system configured to transfer data over a communication network (120, fig. 1) between a server system (130, 150, fig. 1) and a plurality of user sites (102, fig. 1; clients; col. 1, lines 64-65) in response to requests from network browsers at the user sites (col. 1, lines 39-67; col. 2, lines 20-52), the performance



management system comprising:

means for monitoring a network browser of a first user site of the plurality of user sites to obtain performance data of the data access system, the performance data being indicative of a data transfer operation in the data access system performed in response to a network browser request initiated by a user of the first user site, the monitoring means including a monitoring agent (client monitoring application, 110, fig. 3) resident at the first user site (100, fig. 3) (col. 5, lines 53-67; col. 6, lines 12-27; col. 6, line 56 – col. 7, line 4; col. 8, lines 16-30);

means for receiving the data indicative of the performance data transmitted from said performance monitor agents (col. 5, lines 53-67; col. 6, line 56 – col. 7, line 4; col. 8, lines 16-30);

means for selecting a quantity of data received (col. 6, lines 1-27; col. 6, lines 44-64);

means for summarizing the quantity of data received (data is summarized and classified; col. 6, lines 1-27; col. 6, lines 44-64); and

means for storing said summarized quantity of data into a database (140, fig. 3; col. 5, lines 47-52).

19. Haitsuka does not specifically disclose ascertaining quality of service conditions of said data access system. However, Liu discloses ascertaining quality of service conditions of said data access system (col. 19, lines 12-21; col. 23, lines 54-62; col. 57, lines 14-27). It would have been obvious to one of ordinary skill in the art at the time of

the invention to combine the teachings of Haitzuka and Liu because Liu's ascertaining quality of service conditions of the system would provide more accurate and comprehensive assessment of the interests of the web visitor (Liu, col. 23, lines 54-62).

20. **Claims 13, 14, 16, 18-24, 26-52** are rejected under 35 U.S.C. 103(a) as being unpatentable over Reps et al (US 6,070,190), hereinafter Reps, in view of Killian (US 6,438,592 B1), hereinafter Killian.

21. As for claim 13, Reps discloses a performance management system that monitors data transferred between at least one remote site and at least one user site (col. 1, lines 24-50), comprising:

a network browser (web browser, fig. 6) disposed on a first user site of the at least one user site and configured to browse the at least one remote site, in response to a request by a user of the first site, for transferring data between the at least one remote site and the first user site (col. 5, lines 24-42; col. 17, lines 45-63);

a client application residing on the first user site of the at least one user site (AMA application program; 203, fig. 2), the client application comprising:

a data gathering module that is adapted to capture at least the performance data, wherein the performance data is indicative of data transfer operations, that affect data transfer between the first user site and the at least one remote site, initiated by network browser requests initiated by a user of the first user site and that includes at least communication data indicative of network statistics for data transfers and

application data indicative of statistics of the network browser, the performance data being associated with individual web page object retrievals (col. 5, lines 17-23; col. 6, lines 19-54; col. 9, lines 59 – col. 10, line 28); and

an agent that is adapted to create preliminary summary data from at least the performance data, wherein the preliminary summary data includes summaries of at least the individual *object* retrievals from the at least one remote site, wherein the at least one remote site and at least one user site do not need to acknowledge each other (servers 104, fig. 1; col. 5, lines 38-42; col. 6, lines 1-5; col. 6, lines 19-31); and  
at least one server that is configured to receive the preliminary summary data from the client application (col. 6, lines 15-31).

22. Reps teaches capturing performance data associated with the transfer of HTML based applications over the internet (col. 8, lines 56-64). However, Reps does not explicitly teach capturing performance data associated with web page object retrievals. Killian teaches capturing performance data associated with web page object retrievals (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by capturing performance data associated with web page object retrievals in order to improve the performance provided by web servers to client computers, as taught by Killian (col. 3, lines 20-22).

23. As for claim 14, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to simultaneously integrate with at

least a network level interface and an application level interface for measurement and collection of the communication data and the application data (col. 5, lines 17-62).

24. As for claim 16, Reps teaches the performance management system of claim 13, wherein the client application is adapted to combine the captured communication data and application data gathered from the network level interface and the application level interface into a single page performance record to link the communication data and application data (col. 5, lines 17-62).

25. As for claim 18, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to determine overall usage of a data access system (Figs. 8-10).

26. As for claim 19, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to ascertain a quality of service based on an aggregated end user response to a data access system (Figs. 8-10).

27. As for claim 20, Reps teaches the performance management system according to claim 13, wherein the received performance data is used to analyze aggregated end user response based on actions taken within a data access system and wherein the aggregated end user response is used to infer user behavior (col. 6, line 66 – col. 7, line

13).

28. As for claim 21, Reps teaches the performance management system according to claim 20, wherein the received performance data is used to generate graphical illustrations of aggregated end user response in combination with actual performance within a data access system (col. 5, lines 39-45).

29. As for claim 22, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to queue a predetermined number of immediately preceding page performance measurements for transmission or internal assessment (col. 5, lines 39-45).

30. As for claim 23, Reps teaches the performance management system according to claim 22, wherein the client application is adapted to transmit the queued page performance measurements when instructed by the at least one monitoring server or in response to the internal assessment (col. 5, lines 39-45).

31. As for claim 24, Reps teaches the performance management system according to claim 13, wherein the client application is adapted to respond to and transmit a configurable number of subsequent page performance measurements based on a set of received rules including a number of pages to transmit or a duration of time to transmit subsequent pages (col. 5, lines 43-62).

32. As for claims 29-37, 40 and 42-45, Reps teaches the use of configuration information to adjust the specific monitoring parameters (col. 11, line 42 – col. 12, line 27). However, Reps does not appear to explicitly teach a client application receiving instructions from a server. However, Killian explicitly teaches a client application receiving instructions from a monitoring server in order to adjust the monitoring parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by receiving instructions from a server at a client application in order to optimize the monitoring parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

33. As for claims 26-28, Reps teaches requesting and caching objects for configurable period of time, however, Reps does not specifically teach that the objects may comprise graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames. Killian teaches performance monitoring for objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by using objects comprising graphical and non-graphical web page objects including images, plug-ins, page frames, applets and cascading style sheets associated with web pages and web frames in order to monitor performance parameters

for specific web objects, as taught by Killian (col. 3, lines 47-63).

34. As for claims 38, 39 and 41, Reps teaches a graphical user interface communicating metrics associated with object retrievals (Figs. 8-10), however, Reps does not specifically disclose that the objects may comprise web page objects. Killian teaches obtaining metrics for web page object retrievals in order to monitor performance parameters for specific web objects (col. 3, lines 23-63). It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reps by communicating metrics associated with web page object retrievals in order to monitor performance parameters for specific web objects, as taught by Killian (col. 3, lines 47-63).

35. As for claim 46, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect, aggregate, and display performance data associated with predefined individual objects measured by the agent (col. 6, lines 15-54).

36. As for claim 47, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to store, display and determine trends based on performance data that is associated with individual objects measured by the agent (col. 6, line 15 – col. 7, line 13; Figs. 8-10).

37. As for claim 48, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to collect and aggregate performance data for comparison to predefined performance based threshold settings (col. 5, lines 63-67).

38. As for claim 49, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to create, store, and evaluate performance thresholds settings based on at least one of metric values, metric value percentage differences, direct metric comparison with other metrics, historical metric values, and metric value rate of change calculations (col. 5, line 63 – col. 6, line 62).

39. As for claim 50, Reps teaches the performance management system according to claim 13, wherein the at least one monitoring server is adapted to monitor performance threshold settings and, if predetermined values are exceeded, provide automated user indications including at least one of email alerts, pager alerts, user interface notifications, and network level diagnostic operations (col. 5, lines 63-67).

40. As for claim 51, Reps does not explicitly disclose stopping the data transfer operation at the request of a user. However, the Examiner finds that this is inherent to the network browser disclosed by Reps (col. 17, lines 45-63). That is, any standard network browser includes a function for stopping data transfer operations (e.g., the stop



button in Internet Explorer), as would be apparent to one of ordinary skill in the art.

41. As for claim 50, Reps teaches wherein the application data are indicative of at least one of browser imposed latency (col. 16, lines 19-32), user experience (col. 10, lines 1-15), user reaction (col. 3, lines 24-39), and user tolerance (col. 4, lines 33-46) to data transfer characteristics as measurable from the network browser.

### ***Conclusion***

42. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Merriman et al, US 2002/0099600, Subramonian et al, patent 6,701,362 disclose a method and system for monitoring user activities and collecting content and context information based on the monitored user activities.

43. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jungwon Chang whose telephone number is 571-272-3960. The examiner can normally be reached on 9:30-6:00 (Monday-Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John A Follansbee can be reached on 571-272-3964. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jungwon Chang  
January 4, 2006